

Before the  
Federal Communications Commission  
Washington, D.C. 20554

RECEIVED

OCT - 1 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matters of

Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	
	)	
Petition of Bell Atlantic Corporation	)	CC Docket No. 98-11
For Relief from Barriers to Deployment of	)	
Advanced Telecommunications Services	)	
	)	
Petition of U S West Communications, Inc.	)	CC Docket No. 98-26
For Relief from Barriers to Deployment of	)	
Advanced Telecommunications Services	)	
	)	
Petition of Ameritech Corporation to	)	CC Docket 98-32
Remove Barriers to Investment in	)	
Advanced Telecommunications Technology	)	
	)	
Petition of the Alliance for Public	)	CCB/CPD No. 98-15
Technology Requesting Issuance of Notice	)	RM 9244
Of Inquiry and Notice of Proposed	)	
Rulemaking to Implement Section 706 of	)	
The 1996 Telecommunications Act	)	
	)	
Petition of the Association for Local	)	CC Docket No. 98-78
Telecommunications Services (ALTS) for a	)	
Declaratory Ruling Establishing Conditions	)	
Necessary to Promote Deployment of	)	
Advanced Telecommunications Capability	)	
Under Section 706 of the Telecommunications	)	
Act of 1996	)	
	)	
Southwestern Bell Telephone Company,	)	CC Docket No. 98-91
Pacific Bell, and Nevada Bell Petition for	)	
Relief from Regulation Pursuant to	)	
Section 706 of the Telecommunications Act	)	
Of 1996 and 47 U.S.C. § 160 for ADSL	)	
Infrastructure and Service	)	

REPLY COMMENTS OF PRISM COMMUNICATION SERVICES, INC.

Prism Communication Services, Inc. ("Prism") hereby submits its Reply Comments in connection with the United States Court of Appeals for the District of Columbia Circuit's Remand of the August 1998 Advanced Services Order.<sup>1</sup>

In its initial comments filed in this proceeding, Prism demonstrated why the Commission should uphold its determination in the Advanced Services Order<sup>2</sup> that the market-opening requirements of section 251(c) of the Telecommunications Act of 1996<sup>3</sup> apply to the offering of xDSL-based advanced services and packet-switching technologies. As was shown by Prism and other parties participating in this proceeding, Section 251(c) of the Act is technology agonistic and is not intended to apply exclusively, as US WEST would have the Commission believe, to circuit-switched, traditional, telephony voice services.<sup>4</sup> By its very terms, Section 251(c) is intended to apply in large part to a broader category of services and service providers – telecommunications services and telecommunications carriers – and is not restricted to "local exchange carriers." Moreover, as evidenced by Congress' 1996 amendment to the statute, even if Section 251(c) is limited in part to "local exchange carriers," xDSL-type advanced

---

<sup>1</sup> In the Matter of Petition for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-91, 98-147, *Public Notice Requesting Comments in Connection with Court Remand of August 1988 Advanced Services Order*, DA 99-1853 (rel. September 9, 1999) ("Public Notice").

<sup>2</sup> In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-81, 98-147 and CB/CPD No. 98-15 and RM 9244, *Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 13 FCC Rcd 24011 (1988) ("Advanced Services Order").

<sup>3</sup> The 1996 Act is codified at 47 U.S.C. §§ 151 *et seq.* (the "Act").

<sup>4</sup> See, e.g., Comments of MCI WorldCom, Inc. at 6; Comments of Sprint Corporation at 7; Comments of Rhythms NetConnections, Inc. at 8-11; Joint Comments of Advanced Telecom Group, Allegiance, e.spire, Intermedia, NextLink and Winstar at 3; Comments of the General Services Administration at 5.

service is a “telephone exchange service” and therefore fully within the scope of the statute.

In sum, as originally determined by the Commission in the Advanced Services Order, Section 251(c) of the Act applies to xDSL-type advanced services. None of the other parties in this proceeding, particularly the incumbent local exchange carriers (“ILECs”), have provided any basis on which to find otherwise. The ILECs which submitted comments in response to the Public Notice -- U S WEST, SBC and GTE -- do little more than restate the same arguments raised by U S WEST in its underlying Brief. As demonstrated by Prism in its comments, as well as the comments filed by numerous other competitive local exchange carriers (“CLECs”), these arguments have no basis in law, fact or in policy and should therefore be rejected by the Commission.

The deployment of advanced telecommunications capability to all Americans is contingent upon the ability of competitive and innovative providers of advanced telecommunications services to enter the market assured of ready and cost-based access to network elements necessary to provide its services. If competitive advanced services providers cannot exercise their rights under Section 251(c), they will be unable to offer their services, pure and simple. Accordingly, by advancing their argument that Section 251(c) of the Act does not apply to xDSL-type advanced services, U S WEST and its brethren effectively wish to be the sole providers of advanced services. The ILECs should not be allowed to succeed in their attempts to retain their monopolies and force a stranglehold on competition in the advanced services arena. The American consumers, eager for innovative and advanced technologies, should not be denied the benefits that only full competition can deliver.

Incredibly, U S WEST takes the position that requiring the ILECs to adhere to their Section 251(c) obligations with respect to advanced services will somehow stifle competition.<sup>5</sup> U S WEST claims that it is an ILEC for purposes of Section 251(c) only when offering traditional voice services, but not when it offers advanced services.<sup>6</sup> U S WEST's argument is absurd. The same building blocks necessary to provide traditional, circuit-switched voice service – as set forth in Section 251(c) – are necessary to provide advanced services. It is ridiculous for U S WEST to attempt to shed its ILEC status for advanced services when U S WEST holds the keys necessary to provide advanced services. There is no basis on which to allow U S WEST to unilaterally deem itself a non-ILEC in order to shirk its duties under Section 251(c) of the Act with respect to advanced services. Should the Commission be led down this path – a path that can only lead to the end of competition for advanced services – Americans will unfairly be denied the right to innovative and advanced technologies. Accordingly, the Commission should reject out of hand U S WEST's preposterous claim that requiring ILECs to adhere to their statutory obligations with respect to advanced services will somehow impede competition. Quite the opposite is true and the potential consequences severe.

For the same reasons, the Commission should reject GTE's claim that the wholesale discount provided for in Section 251(c)(4) of the Act does not apply to advanced services. GTE claims that the "plain language of Section 251(c)(4) excludes

---

<sup>5</sup> U S WEST's Comments at 3 ("[i]ndeed, such regulatory requirements – including unbundling and resale – would operate to discourage all carriers from investing in and deploying new communications technologies"). *See also* U S WEST's Comments at 5 ("Congress decided that sections 251(b) and (c) should apply only to the provision of telephone exchange service and exchange access because it recognized that competition is developing rapidly in the advanced services market and that regulation would stifle that development by discouraging investment and innovation").

<sup>6</sup> U S WEST's Comments at 16-21.

advanced services from the discount requirement.”<sup>7</sup> In GTE’s opinion, advanced services do not meet the requirements of Section 251(c)(4) inasmuch as they are not offered “at retail” or “to subscribers who are not telecommunications carriers,” but are “simply a means of affording high-speed access to the Internet.”<sup>8</sup> GTE’s position is curious, at best. First, many of the ILECs market and offer DSL services directly to consumers. For example, Bell Atlantic has commenced offering to residents in the Washington, D.C. metropolitan area its retail ADSL service offering, Infospeed. These services are clearly being offered “at retail” to “subscribers who are not telecommunications carriers.”

Perhaps in acknowledgement of its weak legal argument, GTE also appeals to the Commission on policy grounds. GTE asks the Commission to forbear from enforcing Section 251(c)(4) with respect to advanced services because the requirements thereunder “have been fully implemented” and, therefore, that such forbearance is favored by public policy.<sup>9</sup> Given the relative infancy of the advanced services market, it is ludicrous to claim that the requirements of Section 251(c)(4) have been fully implemented with respect to advanced services. GTE’s unfounded, sweeping statement to the contrary must be rejected. Moreover, public policy clearly weighs in favor of maintaining a competitive marketplace for advanced services and against allowing the ILECs to secure a monopolistic hold in this area. For these reasons, the Commission should reject GTE’s claim that Section 251(c)(4) does not apply to advanced services.

---

<sup>7</sup> GTE’s Comments at 11.

<sup>8</sup> Id. at 11-13.

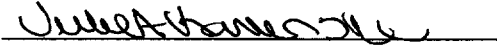
<sup>9</sup> Id. at 13-14.

## CONCLUSION

It is critical to the continuing evolution of advanced services that the Commission uphold its original determination that the obligations set forth under Section 251(c) of the Act apply to advanced services, such as xDSL-based services. The Commission should acknowledge that Section 251(c) is technology agnostic and that Congress did not intend to restrict the ILECs' obligations thereunder to the traditional, circuit-switched voice network of days gone by. The Commission must ensure that the citizens of our country continue to reap the benefits that only a competitive advanced services market can deliver.

Respectfully submitted,

**PRISM COMMUNICATION SERVICES, INC.**

By:   
Randall B. Lowe, Chief Legal Officer  
Julie A. Kaminski, Deputy Chief Counsel  
— Telecommunications

October 1, 1999

### CERTIFICATE OF SERVICE

I, Jane L. Hall, hereby certify that a true and correct copy of the Reply Comments to Remand the Advanced Service Order was hand delivered to the following individuals, this 1st day of October, 1999.

Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B201  
Washington, DC 20554

Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B115  
Washington, DC 20554

Honorable Gloria Tristiani  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-C302  
Washington, DC 20554

Honorable Michael K. Powell  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A204A  
Washington, DC 20554

Honorable Harold Furchtgott-Roth  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A302  
Washington, DC 20554

ITS, Inc.  
1231 20<sup>th</sup> Street, NW  
Washington, D.C. 20036

Ms. Carol E. Matthey  
Chief  
Policy and Program Planning Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C207  
Washington, DC 20554

Ms. Linda Kinney  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B115  
Washington, DC 20554

Mr. Lawrence E. Strickling  
Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C457  
Washington, DC 20554

Mr. Kyle D. Dixon  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A204A  
Washington, DC 20554

Ms. Janice M. Myles  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C327  
Washington, DC 20554

Mr. Jim Casserly  
Senior Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B115  
Washington, DC 20554

Mr. Jonathan Askin  
Attorney Advisor  
Policy and Program Planning Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C207  
Washington, DC 20554

Mr. Thomas Power  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B201  
Washington, DC 20554

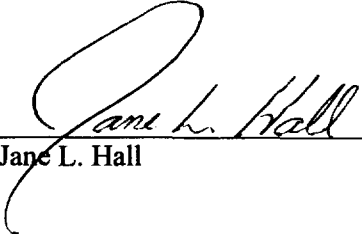
Mr. Paul Misener  
Chief of Staff  
Senior Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A302  
Washington, DC 20554

Mr. Kevin Martin  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A302  
Washington, DC 20554

Mr. Paul Gallant  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-C302  
Washington, DC 20554

Staci Pies  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Date: October 1, 1999

  
\_\_\_\_\_  
Jane L. Hall